

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 308

October 8, 1998, 12:44 p.m.
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INTERNET TAX FREEDOM ACT/Final Passage

SUBJECT: Internet Tax Freedom Act . . . S. 442. Final passage, as amended.

ACTION: BILL PASSED, 96-2

SYNOPSIS: As passed, S. 552, the Internet Tax Freedom Act, will impose a 3-year moratorium beginning October 1, 1998, on certain Internet taxes, and will establish an advisory commission on electronic commerce to study the issue and make recommendations during that moratorium. Details are provided below.

- The 3-year moratorium will apply to the imposition of "taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998;" and to the imposition of "multiple or discriminatory taxes on electronic commerce" (for related debate, see vote Nos. 299 and 305-306).

- Nothing in this Act will be construed as modifying, impairing, or superseding any State or local tax law currently in effect that is otherwise permissible under the Constitution or Federal law.

- Nothing in this Act will affect liability for taxes accrued and enforced before the date of enactment of this Act, nor will this Act affect on-going litigation relating to such taxes.

- The term "generally imposed and actually enforced" will be defined as meaning either that a provider of Internet access services had a reasonable opportunity to know of an Internet tax by virtue of a rule or other public proclamation of a taxing authority or that a State or other taxing authority had generally collected the tax (see vote No. 306).

- The moratorium will not apply to Internet taxes: on commercial services that contain material harmful to minors and that do not take certain steps to restrict access to that material by minors under 17 years old; or to Internet access providers who do not offer customers, when they purchase access, free screening software or such software for a fee to block material that is harmful to minors (see vote No. 303).

- The Advisory Commission on Electronic Commerce will be established. It will have members from the Federal Government, State and local governments, the electronic commerce industry, telecommunications carriers, local retail businesses, and consumer

(See other side)

YEAS (96)				NAYS (2)		NOT VOTING (2)	
Republican (54 or 98%)		Democrats (42 or 98%)		Republicans (1 or 2%)	Democrats (1 or 2%)	Republicans (0)	Democrats (2)
Abraham	Hutchinson	Akaka	Kennedy	Gorton	Bumpers		Glenn ⁻² Hollings ⁻²
Allard	Hutchison	Baucus	Kerrey				
Ashcroft	Inhofe	Biden	Kerry				
Bennett	Jeffords	Bingaman	Kohl				
Bond	Kempthorne	Boxer	Landrieu				
Brownback	Kyl	Breaux	Lautenberg				
Burns	Lott	Bryan	Leahy				
Campbell	Lugar	Byrd	Levin				
Chafee	Mack	Cleland	Lieberman				
Coats	McCain	Conrad	Mikulski				
Cochran	McConnell	Daschle	Moseley-Braun				
Collins	Murkowski	Dodd	Moynihan				
Coverdell	Nickles	Dorgan	Murray				
Craig	Roberts	Durbin	Reed				
D'Amato	Roth	Feingold	Reid				
DeWine	Santorum	Feinstein	Robb				
Domenici	Sessions	Ford	Rockefeller				
Enzi	Shelby	Graham	Sarbanes				
Faircloth	Smith, Bob	Harkin	Torricelli				
Frist	Smith, Gordon	Inouye	Wellstone				
Gramm	Snowe	Johnson	Wyden				
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hagel	Thompson						
Hatch	Thurmond						
Helms	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

groups. Ten members will be appointed by the Republican leadership of Congress, 6 members will be appointed by the Democratic leadership, and three members will be Clinton Administration officials. The Commission will "conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate, or international sales activities." The study will examine several specific issues listed in the Act, including a study of the broader issue of the tax effects of all interstate transactions, including Internet transactions, and including the effects on State and local governments and retail businesses (see vote No. 304; for related debate, see vote Nos. 296 and 300). The Commission will not examine fees or charges imposed pursuant to the Communications Act or the Telecommunications Act. The Commission will issue a report within 18 months. Any recommendations will require the support of two-thirds of its members, and will have to be "tax and technologically neutral and apply to all forms of remote commerce."

- Several terms will be defined, including the terms "multiple tax," "tax on Internet access," and "discriminatory tax." The definition for discriminatory tax will include language to define how much of a presence (nexus) an Internet business must have to be subject to a State's tax authority for purposes of determining if a tax is discriminatory against Internet Commerce; a portion of that nexus language will be prospective only.

- It is the sense of Congress that no new Federal taxes should be placed on the Internet during the moratorium.
- It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce.
- Nothing in this Act will be construed as expanding the duty of any person to collect or pay taxes beyond any such duty as it existed before the date of enactment of this Act.
- Nothing in this Act will affect the implementation of the Telecommunications Act.
- If any part or application of this Act is found unconstitutional the other parts and applications will remain in effect.
- Authentication standards will be established for electronic communications.
- Regulations will be developed: to protect the privacy of personal information collected from and about children on the Internet; and to give parents greater control over the collection and use of that information.

Those favoring final passage contended:

Usually when Congress passes legislation it is to correct a problem that has already happened. In this case, we are pleased to say that it is nipping a problem in the bud. Internet commerce totals just \$8 billion yearly now, and efforts to tax it have only just begun. Except in a few scattered areas, State and local governments have not yet imposed taxes. However, the number of jurisdictions that are looking at this commerce as a potentially huge source of tax revenues is growing at an alarming rate, which really is not that surprising because Internet sales are expected to grow tremendously, exceeding \$400 billion as early as 2002. The proposed taxes and tax rates vary widely. With 30,000 taxing jurisdictions in America, we may well soon end up with a maze of taxes that will be impossible for Internet businesses to negotiate. Further, the taxes that are imposed may well turn out to be discriminatory against this type of sales. The preferable course would be to treat all sales equally, whether they are through the Internet, retail stores, catalogs, cable television, or any other means. We want everyone to have a fair chance to compete. Therefore, with this bill we have imposed a moratorium on Internet taxes. During that moratorium, fair and uniform rules for taxing Internet sales will be devised and implemented.

Passing this bill will prove especially beneficial for small businesses. Millions of home-based businesses that sell goods online have already sprung up, and small- and medium-sized businesses have been rapidly getting web pages as well. Such businesses would soon founder if they were suddenly bound by a maze of taxes from 30,000 different governments in the United States alone. Consumers also will benefit from having a huge increase in choices for their purchases. Increasingly, they will be able to shop, at the speed of light, for millions of different products anywhere in the world, while sitting in the comfort of their own homes.

This bill has been vigorously debated for 18 months. Each of its provisions has been painstakingly negotiated. Roughly 50 changes have been made to meet the particular concerns of individual Members, especially concerns to protect certain taxes that have already been imposed in their States. We believe that the final product will now have the support of most Members.

The Internet is growing at a rapid pace. This bill is intended to make certain that State and local governments do not impede or kill that growth with taxes. It has been a bipartisan effort to draft and pass this bill from the beginning, and we are confident that it will pass with overwhelming, bipartisan support.

No arguments were expressed in opposition to final passage.